

**CHAPTER NO. 444**

**SENATE BILL NO. 796**

**By Cohen**

**Substituted for: House Bill No. 770**

**By Briley, Buck, Brooks, Towns**

AN ACT To amend Tennessee Code Annotated, Title 40, Chapter 26 and Title 40, Chapter 30, to enact the "Post-Conviction DNA Analysis Act of 2001".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 40, Chapter 30, is amended by adding the following as a new Part 3:

Section 40-30-301. This part shall be known and may be cited as the "Post-Conviction DNA Analysis Act of 2001".

Section 40-30-302. As used in this part unless the context otherwise requires, "DNA analysis" means the process through which deoxyribonucleic acid (DNA) in a human biological specimen is analyzed and compared with DNA from another biological specimen for identification purposes.

Section 40-30-303. Notwithstanding the provisions of Part 2 of this chapter or any other provision of law governing post-conviction relief to contrary, a person who was convicted of and sentenced for commission of first degree murder, second degree murder, aggravated rape, rape, aggravated sexual battery or rape of a child, attempted commission of any of these offenses, any lesser included offense of these offenses, or, at the direction of the trial judge, any other offense, may at any time, file a petition requesting the forensic DNA analysis of any evidence that is in the possession or control of the prosecution, law enforcement, laboratory, or court and that is related to the investigation or prosecution that resulted in the judgment of conviction and that may contain biological evidence.

Section 40-30-304. After notice to the prosecution and an opportunity to respond, the court shall order DNA analysis if it finds that:

(a) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis;

(b) The evidence is still in existence, and in such a condition that DNA analysis may be conducted;

(c) The evidence was never previously subjected to DNA analysis or was not subjected to the analysis that is now requested which can resolve an issue not resolved by previous analysis; and

(d) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

Section 40-30-305. After notice to the prosecution and an opportunity to respond, the court may order DNA analysis if it finds that:

(a) A reasonable probability exists that analysis of the evidence will produce DNA results which would have rendered the petitioner's verdict or sentence more favorable if the results had been available at the proceeding leading to the judgment of conviction;

(b) The evidence is still in existence, and in such a condition that DNA analysis may be conducted;

(c) The evidence was never previously subjected to DNA analysis, or was not subject to the analysis that is now requested which can resolve an issue not resolved by previous analysis; and

(d) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

Section 40-30-306. In the case of an order issued pursuant to § 40-30-304, the court shall order the analysis, and payment if necessary. In the case of an order under § 40-30-305, the court may require the petitioner to pay for the analysis.

Section 40-30-307. The court may, at any time, during proceedings instituted under this part, appoint counsel for an indigent petitioner.

Section 40-30-308. If evidence had previously been subjected to DNA analysis by either the prosecution or defense, the court may order the prosecution or defense to provide all parties and the court with access to the laboratory reports prepared in connection with the DNA analysis, as well as the underlying data and laboratory notes. If any DNA or other biological evidence analysis was previously conducted by either the prosecution or defense without knowledge of the other party, such analysis shall be revealed in the motion for analysis or response, if any. If the court orders DNA analysis in connection with a proceeding brought under this part, the court shall order the production of any laboratory reports prepared in connection with the DNA analysis and may, in its discretion, order production of the underlying data and laboratory notes.

Section 40-30-309. When the petition is not summarily dismissed, the court shall order that all evidence in the possession of the prosecution, law enforcement, laboratory, or the court that could be subjected to DNA analysis must be preserved during the pendency of the proceeding. The intentional destruction of evidence after such an order may result in appropriate sanctions, including criminal contempt for a knowing violation.

Section 40-30-310. If the court orders analysis, it shall select a laboratory that meets the standards adopted pursuant to the DNA Identification Act of 1994.

Section 40-30-311. The court may in its discretion make such other orders as may be appropriate.

Section 40-30-312. If the results of the post-conviction DNA analysis are not favorable to the petitioner, the court shall dismiss the petition, and make such further orders as may be appropriate. If the results of the post-conviction DNA

analysis are favorable, the court shall order a hearing, notwithstanding any provisions of law or rule of court that would bar such a hearing as untimely, and thereafter make such orders as are required or permitted by the rules of criminal procedure or Part 2 of this title.

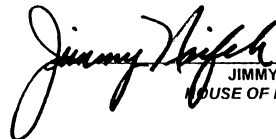
Section 40-30-313. If an order is issued requiring a DNA analysis be paid on behalf of a petitioner pursuant to this part, the payment shall be made from the criminal injuries compensation fund established under § 40-24-107. Such payment shall be made only after receipt by the state treasurer of a certified copy of the order and only upon receipt of a bill from the laboratory that conducted the analysis. The bill shall set forth the name of the petitioner, the date the analysis was performed, the amount of the bill, and the name and address of the laboratory to which payment is to be made.

SECTION 2. Tennessee Code Annotated, Section 40-26-106, is amended by deleting the section in its entirety.

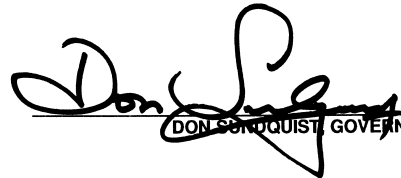
SECTION 3. This act shall take effect August 1, 2001, the public welfare requiring it.

**PASSED: July 11, 2001**

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

**APPROVED this 18<sup>th</sup> day of July 2001**

  
DON SUNDQUIST, GOVERNOR